



Office of the Attorney General
State of Texas

July 13, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. David E. Lindsay
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OR93-451

Dear Mr. Lindsay:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. art. 6252-17a. Your request was assigned ID# 20865.

The Victoria Independent School District (the "district") received an open records request for documents pertaining to the personnel evaluation of the district's superintendent. You contend that the requested records come under the protection of section 3(a)(2) of the Open Records Act, which protects, *inter alia*, "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy"

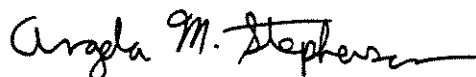
The scope of section 3(a)(2) protection is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1): to be protected from required disclosure the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.).

A previous determination of this office, Open Records Decision No. 473 (1987), a copy of which is enclosed, resolves your request. Even a highly subjective evaluation of a public employee does not ordinarily come under the protection of section 3(a)(2) because such records do not pertain to the employee's private affairs. Further, the records at issue pertain to the superintendent's actions as a public servant, and as such cannot be deemed to be outside the realm of public interest. *See also* Open Records Decision No. 444 (1986).

We note, however, that one of the evaluations does contain some highly intimate or embarrassing information about other individuals that is not of legitimate concern to the public. We have marked those portions of the evaluation that must be withheld pursuant to section 3(a)(2). The district must release all of the remaining information at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Open Government Section

AMS/RWP/jmn

Ref.: ID# 20865

Enclosures: Open Records Decision No. 473
Marked documents

cc: Mr. Scott Willey
Education Writer
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(w/o enclosures)